

APPEAL NO. 030745
FILED MAY 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2003. The hearing officer determined that the appellant's (claimant herein) compensable injury of _____, did not extend to include a cervical spine injury; that the claimant is not entitled to supplemental income benefits (SIBs) for either the sixth or for the seventh quarters; and the respondent (carrier herein) is not relieved of liability for the sixth quarter based upon late filing by the claimant because the claimant timely filed an application for SIBs for the sixth quarter. The claimant appeals the hearing officer's extent-of-injury and SIBs determinations as being contrary to the evidence. The claimant also contends the hearing officer erred by refusing to add the issue of whether the carrier had waived its right to contest the claimant's entitlement to SIBs. The carrier responds that the hearing officer's decision was supported by the evidence and that the hearing officer did not err in refusing to add the issue of carrier waiver.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We first address the issue of whether the hearing officer erred in refusing to add the issue of carrier waiver. The claimant argues that this was discussed at the benefit review conference (BRC), but was not included in the BRC report. As the carrier points out in its response, the claimant did not respond in writing to the BRC report pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(c) (Rule 142.7(c)) or request the addition of a dispute pursuant to either Rule 142.7(d) or Rule 142.7(e). We review the decision of the hearing officer to add or not to add an issue on an abuse of discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In light of the claimant's failure to follow the procedures set out in Rule 142.7 to add an issue, we cannot say that the hearing officer abused his discretion by refusing to add the issue of carrier waiver.

The issue of extent of injury presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The trier of fact may believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's extent-of-injury determination is so against the great

weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the third quarter. The claimant asserted that he had no ability to work due to his compensable injury. The hearing officer found that the claimant did not meet the requirements of Rule 130.102(d)(4), i.e., that the claimant had some ability to work, found that the claimant failed to submit a medical narrative showing how his compensable injury caused an inability to work during the qualifying periods for the sixth and seventh quarters, and determined that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work. Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
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Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Margaret L. Turner
Appeals Judge